

## **Executive Administrator Report**

Carol Moreland, MSN, RN

March 2020

### **NCSBN Upcoming Meetings:**

- 2020 Discipline Case Management Conference is June 1 – 3 in Greenville, SC
  - Attendee: Linda Davies
- 2020 Annual Meeting is August 12 – 14 in Chicago
  - Board President and Executive Administrator are voting delegates
  - Attendees: Patsy Zeller, Carol Moreland, \_\_\_\_\_
- 2020 NCSBN NCLEX Conference is September 14 or 15 in Alexandria, VA (offered twice)
- 2020 NCSBN Scientific Symposium is October 5 in Chicago, IL
- 2020 NCSBN Future of Research Forum is October 6 – 7 in Chicago, IL
- Executive Officer & Attorney Forum is January 12, 2021 in Scottsdale, AZ
  - Attendee: Carol Moreland
- 2021 NCSBN Midyear is March 9 – 11 in Seattle, WA
  - Attendees:
- 2021 NCSBN Annual Meeting is August 18 – 20 in Chicago, IL
  - Board President and Executive Administrator are voting delegates
  - Attendees:

### **Budget:**

- Governor recommended no changes to the FY 2020 & 2021 budget I submitted
- Includes \$20,000 for AAG legal counsel for FY 2020, AG's office will re-evaluate the cost each year, based on usage
- Includes \$103,500 transfer from fee fund for K-Tracs for both years
- Board of Pharmacy has decided they will have enough money and are asking for no funds to be transferred from fee funded agencies for FY 21

### **Regulation Revisions:**

- IV Therapy Regulations -adopted changes effective 1/17/2020
- Proposed changes to the APRN regulations that will allow an APRN to make their APRN license inactive
  - Public notice published in KS Register
  - Public Hearing May 7
  - Presented changes to Joint Committee on Administrative Regulations on March 3
  - Public comments will be in June packet
  - Possible adoption of changes will be on June agenda

- Undergraduate nursing program regulations – Review by Attorney General’s office led to recommendations for changes to 6 of the 10 proposed regulations. Started back through the process
- LMHT education program regulations – will not start through until undergraduate education regulations get through process as they closely resemble them
- Graduate nursing program regulations – on hold presently

#### **Meetings Attended:**

- New Committee Member Orientation on 12/3/2019
- Program Administrator Update on 12/9/2019
- New Board Member Orientation on 2/24/2020

#### **2020 Legislative Action:**

- SB 244, Administrative rules and regulations shall sunset five years after adoption unless extension is approved by legislature – hearing in committee only
- SB 281, Enacting the healthcare price disclosure act – hearing in committee only
- SB 282, Enacting the patient’s right-to-know act; relating to disclosure of charge estimates and insurance coverage descriptions for healthcare services – versions 2 passed by committee
- SB366, Expanding the expedited occupational licensure provisions for military servicemembers and spouses to all license applicants – substitute bill pass by Committee
- SB367, Prohibiting certain licensed individuals from using conversion therapy on minors – referred to committee – no hearing
- SB391, Enacting the right to earn a living act to to minimize unnecessary occupational licensing and regulations – referred to committee – no hearing
- HB 2412 – Updating certain requirements relating to advanced practice registered nurses – referred to committee – no hearing. Committee Chair held a roundtable with Legislators, APRNs and Physicians on 2/19/2020
- HB2453, Creating the open borders for Kansas jobs act; recognizing professional licenses issued by other jurisdictions – referred to committee – no hearing
- HB 2483, Prohibiting certain licensed individual from using conversion therapy on minors – referred to committee – no hearing
- HB 2488, Authorizing schools to maintain supplies of certain emergency medications and to administer such medication in emergency situations – passed out of committee – stricken from calendar in Senate
- **HB 2506, Expanding the military spouse and servicemember’s expedited licensure law to certain other license, certificate or registration applicants – substitute bill passed in the House**
- HB 2579, Updating certain provisions of the prescription monitoring program act relating to program data, storage and access and increasing the membership of the advisory committee – referred to committee – no hearing

### Agency Updates:

- Board member vacancies: presently we have one board member vacancy, a LPN. There will be three Board members' terms that end on June 30, 2020: Rebecca Sanders (has served one term), JoAnn Klaassen (has served two terms) and Tracie Thomas (has served part of an open term).
- Agency vacancies (strategic plan, priority 2): Three Investigator positions and Administrative Specialist in investigative division and Education Specialist.
- Attorney General Opinions (strategic plan, priority 3): removed from our website and link provided to location on Attorney General's website. An Attorney General Opinion No 2020 – 2 was issued re: public health – regulation of Nursing – Nurses-Advanced Practice Registered Nurse; Roles; Delegation of the Determination of Cardiopulmonary Death; Accepted Medical Standards (it is attached)
- Board and Committee member orientation (strategic plan, priority 2): The Agency Leadership team is working on offering this orientation via Zoom instead of offering it on the Monday of Board week. Planning to offer the first of December.
- IV therapy verification in Nursys (strategic plan, priority 3): we are requesting approval to enter IV certification information as a note in Nursys (some other states do this)
- Agency record retention (strategic plan, priority 2): KSBN has been on an agency-wide endeavor to increase our document imaging footprint for all departments. Jessica McGrew was hired as the Document Scanner and Record Retrieval for the Investigative Division. AAGs and I have been working on a revision to the records retention schedule for the Investigative and Agency Files. It will be discussed in Investigative Committee and if approved taken to State Records Meeting in April.
- Monitor fiscal impact of NLC implementation (strategic plan, priority 2): Continue to monitor monthly agency financial reports. No decrease in agency fee fund since implementation of NLC on 7/1/19.

### Other projects:

- U.S. Department of Education re-approval application for recognition to accredit nursing programs – notified at the February 27, 2020 meeting, the National Advisory Committee on Institutional Quality and Integrity (NACIQI) recommended that our recognition be renewed for four years. The Senior Department Official will make a final determination by May 27, 2020.
- Completed NCSBN's ICRS Leadership and Public Policy Module.

Substitute for HOUSE BILL No. 2506

By Committee on Commerce, Labor and Economic Development

2-25

AN ACT concerning occupational regulation; relating to occupational licenses for certain applicants; amending K.S.A. 2019 Supp. 48-3406 and repealing the existing section.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 2019 Supp. 48-3406 is hereby amended to read as follows: 48-3406. (a) For the purposes of this section:

(1) "Applicant" means an individual who is a military spouse, military servicemember or an individual who has established or intends to establish residency in this state. "Applicant" with respect to law enforcement certification by the Kansas commission on peace officers' standards and training means an applicant who has met the employment requirement pursuant to K.S.A. 74-5605(a), and amendments thereto.

(2) "Complete application" means the licensing body has received all forms, fees, documentation and any other information required or requested by the licensing body for the purpose of evaluating the application, consistent with this section and the rules and regulations adopted by the licensing body pursuant to this section **{including proof that the applicant has established or intends to establish residency}**. If the licensing body has received all such forms, fees, documentation and any other information required or requested by the licensing body, an application shall be deemed to be a complete application even if the licensing body has not yet received a criminal background report from the Kansas bureau of investigation.

(3) **{"Established or intends to establish residency" means the applicant has provided the licensing body with:**

(A) Military orders to a post in this state;

(B) an executed mortgage or documentary proof of the closing of a real estate purchase agreement for the applicant's residence in this state; or

(C) an executed lease for the rental of a residence or apartment for the applicant in this state.

(4) "Licensing body" means an official, agency, board or other entity of the state which authorizes individuals to practice a profession in this state and issues a license, registration, certificate, permit or other authorization to an individual so authorized.

1     ~~(2)(4){(5)}~~ "Military servicemember" means a *current* member of the  
2 army, navy, marine corps, air force, air or army national guard of any state,  
3 coast guard or any branch of the military reserves of the United States; ~~and~~  
4 *or a former member with an honorable discharge.*

5     ~~(3)(5){(6)}~~ "Military spouse" means the spouse of an individual who  
6 is currently in active service in any branch of the armed forces of the  
7 United States.

8     ~~(6){(7)}~~ "*Private certification*" means a voluntary program in which  
9 a private organization grants nontransferable recognition to an individual  
10 who meets personal qualifications and standards relevant to performing  
11 the occupation as determined by the private organization.

12     (b) Notwithstanding any other provision of law, any licensing body  
13 shall:

14     ~~(1)—~~ upon submission of a ~~completed~~ *complete* application, issue a  
15 license, registration or certification to ~~a nonresident military spouse~~ *an*  
16 *applicant*, so that the ~~nonresident military spouse applicant~~ may lawfully  
17 practice the person's occupation; ~~and~~

18     ~~(2)—~~ upon submission of a ~~completed~~ application ~~within six months~~  
19 ~~following release from military service,~~ issue a license, registration or  
20 certification to ~~a military servicemember with an honorable discharge so~~  
21 ~~that the military servicemember may lawfully practice the military~~  
22 ~~servicemember's occupation.~~

23     ~~(c) A military servicemember with an honorable discharge or~~  
24 ~~nonresident military spouse~~ *An applicant who holds a valid current*  
25 *license, registration or certification in another state, district or territory of*  
26 *the United States* shall receive a license, registration or certification under  
27 subsection (b) ~~of this section.~~

28     (1) *If the applicant qualifies under the applicable Kansas licensure,*  
29 *registration or certification by endorsement, reinstatement or reciprocity*  
30 *statutes, then pursuant to applicable licensure, registration or certification*  
31 *by endorsement, reinstatement or reciprocity statutes of the licensing body*  
32 *of this state for the* ~~profession~~ *license, registration or certification within*  
33 *60 15 days from the date a complete application was submitted if the*  
34 *applicant is a military servicemember or military spouse or within 45 days*  
35 *from the date a complete application was submitted for all other*  
36 *applicants; or*

37     (2) *if the applicant does not qualify under the applicable licensure,*  
38 *registration or certification by endorsement, reinstatement or reciprocity*  
39 *statutes of the licensing body of this state, or if the Kansas professional*  
40 *practice act does not have licensure, registration or certification by*  
41 *endorsement, reinstatement or reciprocity statutes, then the applicant shall*  
42 *receive a license, registration or certification as provided herein if, at the*  
43 *time of application, the* ~~military servicemember or nonresident military~~

1 *spouse applicant:*

2 (A) Holds a *valid* current license, registration or certification in  
3 another state, district or territory of the United States with licensure,  
4 registration or certification requirements that the licensing body  
5 determines are *substantially* equivalent to those established by the  
6 licensing body of this state, *or holds a certification issued by another state*  
7 *for practicing the occupation but this state requires an occupational*  
8 *license, and the licensing body determines that the certification*  
9 *requirements are substantially equivalent to the licensing requirements*  
10 *established by the licensing body of this state;*

11 (B) has not committed an act in any jurisdiction that would have  
12 constituted grounds for the limitation, suspension or revocation *of the*  
13 *license, certificate or registration*, or that the applicant has never been  
14 censured or had other disciplinary action taken or had an application for  
15 licensure, registration or certification denied or refused to practice an  
16 occupation for which the ~~military servicemember or nonresident military~~  
17 ~~spouse applicant~~ seeks licensure, registration or certification;

18 (C) has not been disciplined by a licensing, registering, certifying or  
19 other credentialing entity in another jurisdiction and is not the subject of  
20 an unresolved complaint, review procedure or disciplinary proceeding  
21 conducted by a licensing, registering, certifying or other credentialing  
22 entity in another jurisdiction nor has surrendered their membership on any  
23 professional staff in any professional association or society or faculty for  
24 another state or jurisdiction while under investigation or to avoid adverse  
25 action for acts or conduct similar to acts or conduct ~~which that~~ would  
26 constitute grounds for disciplinary action in a Kansas practice act;

27 (D) *does not have a disqualifying criminal record as determined by*  
28 *the licensing body of this state under Kansas law;*

29 (E) *provides proof of solvency, financial standing, bonding or*  
30 *insurance if required by the licensing body of this state, but only to the*  
31 *same extent as required of any applicant with similar credentials or*  
32 *experience;*

33 (F) pays any fees required by the licensing body of this state; and

34 ~~(E)~~(G) submits with the application a signed affidavit stating that the  
35 application information, including necessary prior employment history, is  
36 true and accurate.

37 Upon receiving ~~such affidavit~~ *a complete application*, the licensing  
38 body shall issue the license, registration or certification within ~~60~~ 15 days  
39 from the date a complete application was submitted *by a military*  
40 *servicemember or military spouse, or within 45 days from the date a*  
41 *complete application was submitted by an applicant who is not a military*  
42 *servicemember or military spouse, to the* ~~military servicemember or~~  
43 ~~nonresident military spouse applicant~~ on a probationary basis, but may

1 revoke the license, registration or certification at any time if the  
2 information provided in the application is found to be false. ~~Any The~~  
3 ~~probationary license issued under this subsection to a military~~  
4 ~~servicemember or nonresident military spouse~~ period shall not exceed six  
5 months. *Upon completion of the probationary period, the license,*  
6 *certification or registration shall become a non-probationary license,*  
7 *certification or registration.*

8 (d) ~~Any person~~ applicant who has not been in the active practice of  
9 the occupation during the two years preceding the application for which  
10 the applicant seeks a license, registration or certification *under subsections*  
11 *(b) and (c)* may be required to complete such additional testing, training,  
12 ~~mentoring~~, monitoring or *continuing* education as the Kansas licensing  
13 body may deem necessary to establish the applicant's present ability to  
14 practice ~~with reasonable skill and safety in a manner that protects the~~  
15 *health, safety and welfare of the public, as provided by subsection (k).*

16 (e) ~~A nonresident military spouse~~ Upon submission of a complete  
17 application, an applicant shall receive an occupational license,  
18 registration or certification under subsection (b) based on the applicant's  
19 work experience in another state, if the applicant:

20 (1) *Worked in a state that does not use an occupational license,*  
21 *registration or certification to regulate an occupation, but this state uses*  
22 *an occupational license, registration or certification to regulate the*  
23 *occupation;*

24 (2) *worked for at least three years in the occupation during the four*  
25 *years immediately preceding the application; and*

26 (3) *satisfies the requirements of subsection (c)(2)(B) through (G).*

27 (f) Upon submission of a complete application, an applicant shall  
28 receive an occupational license, registration or certification under  
29 subsection (b) based on the applicant's holding of a private certification  
30 and work experience in another state, if the applicant:

31 (1) *Holds a private certification and worked in a state that does not*  
32 *use an occupational license or government certification to regulate an*  
33 *occupation, but this state uses an occupational license or government*  
34 *certification to regulate the occupation;*

35 (2) *worked for at least two years in the occupation;*

36 (3) *holds a current and valid private certification in the occupation;*

37 (4) *is held in good standing by the organization that issued the*  
38 *private certification; and*

39 (5) *satisfies the requirements of subsection (c)(2)(B) through (G).*

40 (g) An applicant licensed, registered or certified under this section  
41 shall be entitled to the same rights and subject to the same obligations as  
42 are provided by the licensing body for Kansas residents, except that  
43 revocation or suspension of ~~a nonresident military spouse's~~ an applicant's

1 license, registration or certificate in the ~~nonresident military spouse's~~  
 2 ~~applicant's~~ state of residence or any jurisdiction in which the ~~nonresident~~  
 3 ~~military spouse applicant~~ held a license, registration or certificate shall  
 4 automatically cause the same revocation or suspension of such ~~nonresident~~  
 5 ~~military spouse's applicant's~~ license, registration or certificate in Kansas.  
 6 No hearing shall be granted to a ~~nonresident military spouse~~ *an applicant*  
 7 where such ~~nonresident military spouse's applicant's~~ license, registration  
 8 or certificate is subject to such automatic revocation or suspension, except  
 9 for the purpose of establishing the fact of revocation or suspension of the  
 10 ~~nonresident military spouse's applicant's~~ license, registration or certificate  
 11 by the ~~nonresident military spouse's applicant's~~ state of residence.

12 (f)(h) In the event the licensing body determines that the license,  
 13 registration or certificate currently held by the ~~military servicemember or~~  
 14 ~~nonresident military spouse~~ *an applicant* under subsection (c)(2)(A) *who*  
 15 *is a nonresident military spouse or nonresident military servicemember* is  
 16 not *substantially* equivalent to those issued by the licensing body of this  
 17 state, the licensing body ~~may~~ *shall* issue a temporary permit for a limited  
 18 period of time to allow the ~~military servicemember or nonresident military~~  
 19 ~~spouse applicant~~ to lawfully practice the ~~military servicemember's or~~  
 20 ~~nonresident military spouse's applicant's~~ occupation while completing any  
 21 specific requirements that are required in this state for licensure,  
 22 registration or certification that ~~was~~ *were* not required in the state, district  
 23 or territory of the United States in which the ~~military servicemember or~~  
 24 ~~nonresident military spouse applicant~~ was licensed, registered, certified or  
 25 otherwise credentialed.

26 (i) *In the event the licensing body determines that the license,*  
 27 *registration or certification currently held by an applicant under*  
 28 *subsection (c)(2)(A) who is not a nonresident military spouse or*  
 29 *nonresident military servicemember is not substantially equivalent to*  
 30 *those issued by the licensing body of this state, the licensing body may*  
 31 *issue a temporary permit for a limited period of time to allow the*  
 32 *applicant to lawfully practice the applicant's occupation while completing*  
 33 *any specific requirements that are required in this state for licensure,*  
 34 *registration or certification that was not required in the state, district or*  
 35 *territory of the United States in which the applicant was licensed,*  
 36 *registered, certified or otherwise credentialed.*

37 (j) *In the event that the licensing body determines that the private*  
 38 *certification or work experience currently held by the applicant under*  
 39 *subsection (e) or (f) is not sufficient to establish the applicant's present*  
 40 *ability to practice in a manner that protects the health, safety and welfare*  
 41 *of the public, the applicant may be required to complete such additional*  
 42 *testing, training, monitoring or continuing education as the licensing body*  
 43 *deems necessary. The applicant shall be issued a temporary permit for a*



1 *limited period of time to allow the applicant to lawfully practice the*  
2 *occupation while completing any specific requirements unless the*  
3 *licensing body finds, based on specific grounds, that issuing a temporary*  
4 *permit would jeopardize the health, safety and welfare of the public.*

5 *(k) Any testing, continuing education or training requirements*  
6 *administered under subsection (d), (h), (i) or (j) shall be limited to Kansas*  
7 *law that regulates the occupation and that are materially different from or*  
8 *additional to the law of another state, or shall be limited to any materially*  
9 *different or additional body of knowledge or skill required for the*  
10 *occupational license, registration or certification in Kansas.*

11 ~~(g)~~(l) *A licensing body may grant licensure, registration, certification*  
12 *or a temporary permit to any person who meets the requirements under*  
13 *this section but was separated from such military service under less than*  
14 *honorable conditions or with a general discharge under honorable*  
15 *conditions.*

16 *(m) Nothing in this section shall be construed to apply in conflict*  
17 *with or in a manner inconsistent with federal law or a multistate compact,*  
18 *or a rule or regulation or a reciprocal or other applicable statutory*  
19 *provision that would allow an applicant to receive a license. Nothing in*  
20 *this section shall be construed as prohibiting a licensing body from*  
21 *denying any application for licensure, registration or certification, or*  
22 *declining to grant a temporary or probationary license, if the licensing*  
23 *body determines that granting the application may endanger the health,*  
24 *safety and welfare of the public.*

25 ~~(h)~~(n) *Each licensing body—may shall adopt rules and regulations*  
26 *necessary to implement and carry out the provisions of this section.*

27 ~~(i)~~(o) *This section shall not apply to the practice of law or the*  
28 *regulation of attorneys pursuant to K.S.A. 7-103, and amendments thereto.*

29 *(p) This section shall apply to all licensing bodies not excluded under*  
30 *subsection (o), including, but not limited to:*

- 31 *(1) The abstracters' board of examiners;*
- 32 *(2) the board of accountancy;*
- 33 *(3) the board of adult care home administrators;*
- 34 *(4) the secretary for aging and disability services, with respect to*  
35 *K.S.A. 65-5901 et seq. and K.S.A. 65-6503 et seq., and amendments*  
36 *thereto;*
- 37 *(5) the Kansas board of barbering;*
- 38 *(6) the behavioral sciences regulatory board;*
- 39 *(7) the Kansas state board of cosmetology;*
- 40 *(8) the Kansas dental board;*
- 41 *(9) the state board of education;*
- 42 *(10) the Kansas board of examiners in fitting and dispensing of*  
43 *hearing instruments;*

- 1 (11) the board of examiners in optometry;
- 2 (12) the state board of healing arts;
- 3 (13) the secretary of health and environment, with respect to K.S.A.
- 4 82a-1201 et seq., and amendments thereto;
- 5 (14) the commissioner of insurance, with respect to K.S.A. 40-241
- 6 and 40-4901 et seq., and amendments thereto;
- 7 (15) the state board of mortuary arts;
- 8 (16) the board of nursing;
- 9 (17) the state board of pharmacy;
- 10 (18) the Kansas real estate commission;
- 11 (19) the real estate appraisal board;
- 12 (20) the state board of technical professions; and
- 13 (21) the state board of veterinary examiners.
- 14 (q) All proceedings pursuant to this section shall be conducted in
- 15 accordance with the provisions of the Kansas administrative procedure act
- 16 and shall be reviewable in accordance with the Kansas judicial review act.
- 17 (r) Commencing July 1, 2020, each licensing body listed in
- 18 subsection (p)(1) through (21) shall provide a report for the period of July
- 19 1 through June 30 to the director of legislative research by August 31 of
- 20 each year, providing information requested by the director of legislative
- 21 research to fulfill the requirements of this subsection. The director of
- 22 legislative research shall develop the report format, prepare an analysis of
- 23 the reports and submit and present the analysis to the office of the
- 24 governor, the committee on commerce, labor and economic development
- 25 of the house of representatives, the committee on commerce of the senate,
- 26 the committee on appropriations of the house of representatives and the
- 27 committee on ways and means of the senate by January 15 of the
- 28 succeeding year. The director's report may provide any analysis the
- 29 director deems useful and shall provide the following items, detailed by
- 30 applicant type, including military servicemember, military spouse and
- 31 non-military individual:
- 32 (1) The number of applications received under the provisions of this
- 33 section;
- 34 (2) the number of applications granted under this section;
- 35 (3) the number of applications denied under this section;
- 36 (4) the average time between receipt of the application and
- 37 completion of the application;
- 38 (5) the average time between receipt of a complete application and
- 39 issuance of a license, certification or registration; and
- 40 (6) identification of applications submitted under this section where
- 41 the issuance of credentials or another determination by the licensing body
- 42 was not made within the time limitations pursuant to this section and the
- 43 reasons for the failure to meet such time limitations.

1 *All information shall be provided by the licensing body to the director*  
2 *of legislative research in a manner that maintains the confidentiality of all*  
3 *applicants and in aggregate form that does not permit identification of*  
4 *individual applicants.*

5 Sec. 2. K.S.A. 2019 Supp. 48-3406 is hereby repealed.

6 Sec. 3. This act shall take effect and be in force from and after its  
7 publication in the statute book.



**STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL**

**DEREK SCHMIDT**  
ATTORNEY GENERAL

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February 4, 2020

**ATTORNEY GENERAL OPINION NO. 2020- 2**

Daniel W. Peters  
Senior Vice President, General Counsel  
University of Kansas Health System  
4000 Cambridge St.  
Kansas City, KS 66160

Re: Public Health—Regulation of Nursing—Nurses—Advanced Practice Registered Nurse; Roles; Delegation of the Determination of Cardiopulmonary Death; Accepted Medical Standards

Public Health—Healing Arts—Kansas Healing Arts Act; Purpose; Definitions; Reports to State Board of Healing Arts—Licensees Who Direct, Supervise, Order, Refer, Accept Responsibility For, Enter Into Practice Protocols With or Delegate Acts Which Constitute Practice of Healing Arts to Others; Requirements and Limitations; Delegation of the Determination of Cardiopulmonary Death; Accepted Medical Standards

Public Health—Physician Assistants—Definitions; Practice of Physician Assistant; Direction and Supervision of Physician; Rules and Regulations; Delegation of the Determination of Cardiopulmonary Death; Accepted Medical Standards

Statutes; Administrative Rules and Regulations and Procedure—Statutory Construction; Determination of Death; Delegation of the Determination of Cardiopulmonary Death; Accepted Medical Standards

Synopsis: A physician licensed by the Kansas State Board of Healing Arts to practice medicine and surgery may delegate acts which would constitute the practice of healing arts to a person licensed by the Kansas State Board of Healing Arts as a physician assistant pursuant to a detailed plan of care with the physician. A physician licensed by the Kansas State Board Healing Arts to practice medicine and surgery may delegate acts which would constitute

the practice of healing arts to a person licensed by the Kansas State Board of Nursing as an advanced practice registered nurse in the role of clinical nurse specialist or nurse practitioner pursuant to a collaborative practice agreement with the physician. No statutes or regulations prohibit or limit a physician delegating to a physician assistant the determination of cardiopulmonary death pursuant to the detailed plan of care with the supervising physician or to an advanced practice registered nurse pursuant to the collaborative practice agreement with the physician. Whether a physician assistant or an advanced practice registered nurse practicing as a clinical nurse specialist or nurse practitioner can make a determination of cardiopulmonary death "in accordance with accepted medical standards" is a question of fact. Cited herein: K.S.A. 22a-231; 65-1113; 65-2412; 65-2801; 65-2836; 65-2837; 65-2869; 65-2870; 65-2873; 65-28,127; 65-28a01; 65-28a02; 65-28a08; 77-202 (Weeks); 77-204; 77-205; 77-206; K.A.R. 60-11-101; K.A.R. 60-11-102; K.A.R. 60-11-104; K.A.R. 60-11-107; K.A.R. 100-28a-6; K.A.R. 100-28a-9; K.A.R. 100-28a-10.

\* \* \*

Dear Mr. Peters:

As general counsel for the University of Kansas Health System, you ask for our opinion on whether determinations of cardiopulmonary death may be made by (1) a licensed advanced practice registered nurse (APRN) in the role of clinical nurse specialist or nurse practitioner pursuant to accepted medical standards and a collaborative practice agreement with a physician or (2) a licensed physician assistant (PA) pursuant to accepted medical standards and a detailed plan of care with a physician. For the reasons explained below, we opine that the answer to your questions is yes if the physician is licensed by the Kansas State Board of Healing Arts to practice medicine and surgery, the statutory requirements for delegation are met, and the accepted medical standards do not prohibit such delegation to a PA or APRN.

#### Determinations of Death

The earliest statute addressing the determination of death required that the determination be made "in the opinion of a physician, based on ordinary standards of medical practice."<sup>1</sup> In 1984, the Kansas Legislature repealed this statute<sup>2</sup> and enacted the Uniform Determination of Death Act (UDDA).<sup>3</sup> Under the UDDA, death occurs when an individual has "sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem."<sup>4</sup> The former definition of death is referred to as "cardiopulmonary death" and the latter is

<sup>1</sup> L. 1970, Ch. 378, § 1; codified in K.S.A. 77-202 (Weeks).

<sup>2</sup> L. 1984, Ch. 345, § 4.

<sup>3</sup> *Id.* at §§ 1 - 3. The UDDA was codified in K.S.A. 77-204 through K.S.A. 77-206.

<sup>4</sup> K.S.A. 77-205.

referred to as "brain death."<sup>5</sup> The UDDA is silent on who makes the determination of death. Thus, we first review the Kansas Healing Arts Act<sup>6</sup> to determine whether there are any statutory prohibitions or restrictions on a physician delegating the determination of cardiovascular death.

#### Kansas Healing Arts Act

Under the Healing Arts Act, a physician is a person who is licensed by the Kansas State Board of Healing Arts (Board of Healing Arts) to practice medicine and surgery and osteopathic medicine and surgery.<sup>7</sup> The Healing Arts Act authorizes a physician to delegate to others, as follows.

Every supervising or responsible licensee who directs, supervises, orders, refers, accepts responsibility for, enters into written agreements or practice protocols with, or who delegates acts which constitute the practice of the healing arts to other persons shall:

- (1) Be actively engaged in the practice of healing arts in Kansas;
- (2) review and keep current any required written agreements or practice protocols between the supervising or responsible licensee and such persons, as may be determined by the board;
- (3) direct, supervise, order, refer, enter into a written agreement or practice protocol with, or delegate to such persons only those acts and functions which the supervising or responsible licensee knows or has reason to believe can be competently performed by such person and is not in violation of any other statute or regulation;
- (4) direct, supervise, order, refer, enter into a written agreement or practice protocol with, or delegate to other persons only those acts and functions which are within the normal and customary specialty, competence and lawful practice of the supervising or responsible licensee;
- (5) provide for a qualified, substitute licensee who accepts responsibility for the direction, supervision, delegation and written agreements or practice protocols with such persons when the supervising or responsible licensee is temporarily absent; and

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<sup>5</sup> In a memorandum attached to your opinion request, it was emphasized the request did not encompass determinations of death under K.S.A. 77-205(2), which presents a more complex set of medical questions, and is based on neurological criteria or an anticipated effort to transplant a person's organs before cessation of heart or lung functions as those events usually coincide with brain death determinations. Memorandum by Fred Logan and Andrew Logan, Logan, Logan & Watson, L.C., Attorneys at Law, dated June 12, 2019, at p. 2 and 3.

<sup>6</sup> K.S.A. 65-2801 *et seq.* and K.S.A. 65-28,122 through K.S.A. 65-28,132.

<sup>7</sup> Attorney General Opinion No. 87-42.

(6) comply with all rules and regulations of the board establishing limits and conditions on the delegation and supervision of services constituting the practice of medicine and surgery.<sup>8</sup>

A responsible licensee is a physician who "has accepted responsibility for the actions of persons who perform acts pursuant to written agreements or practice protocols with . . . such responsible licensee."<sup>9</sup>

In summary, the Healing Arts Act gives a physician broad authority to delegate acts which would constitute the practice of the healing arts to a PA or an APRN if the PA or APRN is competent to perform the delegated act or function; the delegated act and function is within the supervising physician's specialty, competence, and lawful practice; and the delegation does not violate any law. The first two conditions involve questions of fact that are determined on a case-by-case basis. The last condition requires determining whether there are any restrictions or prohibitions regarding delegation by a physician. One such restriction may occur if the physician is required to notify the coroner of a death from other than natural causes.<sup>10</sup> We therefore review the Physician Assistant Licensure Act<sup>11</sup> and the Kansas Nurse Practice Act (KNPA)<sup>12</sup> to determine if those acts have limitations or prohibitions on the delegation of the determination of cardiopulmonary death.

#### Physician Assistant Licensure Act

A PA is a person licensed by the Board of Healing Arts "who provides patient services under the direction and supervision of a supervising physician."<sup>13</sup> A "supervising physician" is "a physician who has accepted responsibility for the medical services rendered and actions of the physician assistant while performing under the direction and supervision of the supervising physician."<sup>14</sup> The "direction and supervision" by the supervising physician does not require the immediate or physical presence of the supervising physician during the performance of work by the PA.<sup>15</sup> Like the Healing Arts Act, the Physician Assistant Licensure Act authorizes only physicians who are licensed to practice medicine and surgery to be a supervising physician for a PA.<sup>16</sup>

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<sup>8</sup> K.S.A. 65-28,127(a).

<sup>9</sup> K.S.A. 65-28,127(b). An osteopathic physician and surgeon is licensed to practice medicine and surgery, thus, such licensees are also deemed to be physicians. See K.S.A. 65-2870(b).

<sup>10</sup> K.S.A. 22a-231.

<sup>11</sup> K.S.A. 65-28a01 *et seq.*

<sup>12</sup> K.S.A. 65-1113 *et seq.*

<sup>13</sup> K.S.A. 65-28a-02(a)(4).

<sup>14</sup> K.S.A. 65-28a02(a)(5).

<sup>15</sup> K.S.A. 65-28a02(a)(2).

<sup>16</sup> K.S.A. 65-28a02(a)(3).

The Physician Assistant Licensure Act governs the relationship between a supervising physician and a PA.<sup>17</sup> In pertinent part, it states:

(a) The practice of a physician assistant shall include medical services within the education, training and experience of the physician assistant that are delegated by the supervising physician. Physician assistants practice in a dependent role with a supervising physician, and may perform those duties and responsibilities through delegated authority or written agreement. Medical services rendered by physician assistants may be performed in any setting authorized by the supervising physician, including, but not limited to clinics, hospitals, ambulatory surgical centers, patient homes, nursing homes and other medical institutions.

(b)(1) A person licensed as a physician assistant may perform, only under the direction and supervision of a physician, acts which constitute the practice of medicine and surgery to the extent and in the manner authorized by the physician responsible for the physician assistant and only to the extent such acts are consistent with rules and regulations adopted by the board which relate to acts performed by a physician assistant under the supervising physician's direction and supervision. A physician assistant may prescribe drugs pursuant to a written agreement as authorized by the supervising physician.<sup>18</sup>

The Board of Healing Arts is required to adopt regulations that govern the practice of a PA, "including the delegation, direction and supervision responsibilities of a supervising physician," and establish conditions and limitations that the Board of Healing Arts determines to be necessary to protect the public health and safety.<sup>19</sup> In doing so, the Board of Healing Arts must consider:

[T]he amount of training and capabilities of physician assistants, the different practice settings in which physician assistants and supervising physicians practice, the needs of the geographic area of the state in which the physician assistant and the supervising physician practice and the differing degrees of direction and supervision by a supervising physician appropriate for such settings and areas.<sup>20</sup>

A physician assistant may perform acts that constitute the practice of medicine and surgery if authorized on the practice form submitted to the Board of Healing Arts by the physician assistant and the physician.<sup>21</sup> This form includes information about each

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<sup>17</sup> K.S.A. 65-28,127(c). "[T]he physician assistant licensure act shall govern the direction and supervision of physician assistants by persons licensed by the [Board of Healing Arts] to practice medicine and surgery," except as provided by regulations adopted by the Board of Healing Arts to implement K.S.A. 65-28,127.

<sup>18</sup> K.S.A. 65-28a08.

<sup>19</sup> K.S.A. 65-28a08(d)(1).

<sup>20</sup> *Id.*

<sup>21</sup> K.A.R. 100-28a-6(c) and K.A.R. 100-28a-9.



practice location and the type of medical services provided to patients.<sup>22</sup> The physician assistant must also submit the written agreement that contains, *inter alia*, "a description of the medical services and procedures that the physician assistant may perform at each practice location," and "a list of medical services and procedures that the physician assistant is prohibited from performing."<sup>23</sup> Another regulation states the supervising physician may:

Delegate to the physician assistant only those acts that constitute the practice of medicine and surgery and meet the following conditions:

(A) The supervising physician believes or has reason to believe that the acts can be competently performed by the physician assistant, based upon the physician assistant's background, training, capabilities, skill, and experience; and

(B) the acts are within the supervising physician's clinical competence and customary practice.<sup>24</sup>

The Board of Healing Arts also adopted a regulation regarding the evaluation of the PA, review of patient records by the supervising physician, and periodic review by the supervising physician of the PA's performance.<sup>25</sup>

In summary, the statutory authorization for a supervising physician to delegate to a PA is broad and there are no regulations that prohibit a supervising physician from delegating to a PA a determination of cardiopulmonary death or that limit the circumstances or practice setting in which a supervising physician may make such delegation to a PA. Rather, the physician determines the practice location and the acts that the physician assistant may do or is prohibited from doing. We conclude that there are no statutory or regulatory limitations or prohibitions for a supervising physician to delegate determinations of cardiopulmonary death to a PA pursuant to a detailed plan of care with the supervising physician.

#### Kansas Nurse Practice Act

Under the KNPA, an APRN is a professional nurse who is licensed by the Kansas State Board of Nursing (Nursing Board) to function in an advanced role.<sup>26</sup> The practice of a professional nurse includes:

[T]he process in which substantial specialized knowledge derived from the biological, physical, and behavioral sciences is applied to: the care,

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<sup>22</sup> K.A.R. 100-28a-9(d)((1)-(2).

<sup>23</sup> K.A.R. 100-28a-9(e)(1)-(2).

<sup>24</sup> K.A.R. 100-28a-10(a)(8).

<sup>25</sup> K.A.R. 100-28a-10(b).

<sup>26</sup> K.S.A. 65-1113(g).

diagnosis, treatment, counsel and health teaching of persons who are experiencing changes in the normal health processes or who require assistance in the maintenance of health or the prevention or management of illness, injury or infirmity; . . . and the execution of the medical regimen as prescribed by a person licensed to practice medicine or surgery . . . .<sup>27</sup>

An APRN is authorized "to make independent decisions about advanced practice nursing needs of families, patients, and clients and medical decisions based on the authorization for collaborative practice with one or more physicians" but the immediate and physical presence of the physician is not required when care is provided by an APRN.<sup>28</sup> A physician is "a person licensed to practice medicine and surgery" by the Board of Healing Arts.<sup>29</sup>

Your request identified only two of the four roles of APRNs—a clinical nurse specialist and a nurse practitioner.<sup>30</sup> The Nursing Board has specified the functions that a clinical nurse specialist and a nurse practitioner are authorized to perform.<sup>31</sup> A nurse practitioner and a clinical nurse specialist are both authorized to "develop and manage the medical plan of care<sup>32</sup> for patients or clients, based on the authorization for collaborative practice."<sup>33</sup> An authorization for collaborative practice means:

[A]n APRN is authorized to develop and manage the medical plan of care for patients or clients based upon an agreement developed jointly and signed by the APRN and one or more physicians. Each APRN and physician shall jointly review the authorization for collaborative practice annually. Each authorization for collaborative practice shall include a cover page containing the date of review by the APRN and physician. Each authorization for collaborative practice shall be maintained in either hard copy or electronic format at the APRN's principal place of practice."<sup>34</sup>

Neither the KNPA nor the regulations adopted by the Nursing Board place any condition, limitation, or prohibition on including the delegation of the determination of cardiopulmonary death in a collaborative practice agreement between a physician and a clinical nurse specialist or nurse practitioner. Thus, we conclude that there are no

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<sup>27</sup> K.S.A. 65-1113(d)(1). The KNPA does not define "medical regimen;" however, it differentiates between a "medical diagnosis" and a "diagnosis." In the context of nursing practice, a diagnosis is the "identification of and discrimination between physical and psychosocial signs and symptoms essential to effective execution and management of the nursing regimen and shall be construed as distinct from a medical diagnosis." K.S.A. 65-1113(b).

<sup>28</sup> K.A.R. 60-11-101(a).

<sup>29</sup> K.A.R. 60-11-101(c).

<sup>30</sup> K.S.A. 65-1113(g) and K.A.R. 60-11-102(a), (d), respectively. The functions of an APRN in the role of a nurse practitioner are set forth in K.A.R. 60-11-104. The functions of an APRN in the role of a clinical nurse specialist are set forth in K.A.R. 60-11-107.

<sup>31</sup> See K.A.R. 60-11-104(b) (nurse practitioner) and K.A.R. 60-11-107(b) (clinical nurse specialist).

<sup>32</sup> The term "medical plan of care" is not defined in the KNPA or a regulation adopted by the Nursing Board.

<sup>33</sup> K.A.R. 60-11-104(b) (nurse practitioner) and K.A.R. 60-11-107(b) (clinical nurse specialist).

<sup>34</sup> K.A.R. 60-11-101(b).

statutory or regulatory limitations or prohibitions that apply to a physician delegating a determination of cardiopulmonary death to an APRN who is a clinical nurse specialist or a nurse practitioner pursuant to a collaborative practice agreement.

#### Accepted Medical Standards

The UDDA requires the determination of death to “be made in accordance with accepted medical standards.”<sup>35</sup> Thus, the UDDA does not explicitly require a physician to make the determination of death. Nevertheless, in Attorney General Opinion No. 90-81, Attorney General Robert Stephen concluded that the determination of death under the UDDA was a medical diagnosis that is made by a physician. The opinion then clarified:

[W]e do not opine that a physician will actually examine the dead body in every instance prior to making the determination of death. In some instances, a medical diagnosis of death could be made based upon the statements of a nurse attending the patient. However, the recognition that the patient is dead in-fact must come from the physician. . . . The degree to which the physician may rely on other than personally gained knowledge is to be determined by application of accepted medical standards, as well as by the legal standard being applied.<sup>36</sup>

The opinion, however, did not address the delegation questions that you raise—whether a physician may delegate the determination of a cardiopulmonary death *in accordance with accepted medical standards*. The phrase “in accordance with accepted medical standards” is not defined in the UDDA, the Healing Arts Act, the Physician Assistant Licensure Act, or the KNAP or in any regulation adopted by the Board of Healing Arts or the Board of Nursing. The memorandum included with your opinion request posits that:

[Physician assistants and APRNs] have the requisite training and competency to make determinations of cardiopulmonary death under Kansas law and accepted medical standards. It is well established that the accepted standard for determining [cardiopulmonary] death has been the permanent absence of respiration and circulation. And it is properly within the training and education of an APRN and a PA, under Kansas law, to make a medical assessment as to whether a patient is no longer breathing or their heart no longer beating.<sup>37</sup>

By contrast, the Board of Healing Arts in its input letter posits that “accepted medical standards generally require the ultimate medical determination of cardiopulmonary death to be made by a physician. . . . Through the licensing process, such physicians are

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<sup>35</sup>K.S.A. 77-205.

<sup>36</sup> Attorney General Opinion No. 90-81; *see also* K.S.A. 65-2869, K.S.A. 65-2870, and K.S.A. 65-2873.

<sup>37</sup> Memorandum by Fred Logan and Andrew Logan, Logan, Logan & Watson, L.C., Attorneys at Law, dated June 12, 2019, at p. 4. Internal quotations and citation omitted.

determined by the Board to have the minimum medical education and training to make such medical conclusions.”<sup>38</sup> Additionally, the Board of Healing Arts “disagrees with any suggestion that [the determination of cardiovascular death] is limited to simply taking measurements of pulse and respiration. . . . [T]his characterization underestimates the clinical complexity that often accompanies a medical determination of ‘irreversible cessation of circulatory and respiratory functions.’”<sup>39</sup>

These inconsistent positions show the phrase “accepted medical standards” relates not only to the procedure for the determination of cardiovascular death but also to who can make that determination. During the hearing on the UDDA, the legal counsel for the National Conference of Commissioners on Uniform State Laws testified the adoption of the UDDA clarifies the “responsibilities of physicians and eliminates the barriers to the modern practice of medicine,” and discussed “the use of life-saving machines and when death was determined when [life-saving machines] are used.”<sup>40</sup> The Kansas Medical Society requested an amendment that stated: “A determination of death must be made in accordance with accepted medical standards *by a person licensed to practice medicine and surgery*.”<sup>41</sup> No action was taken on the request for this amendment.<sup>42</sup>

It is possible that the issue of whether the determination of cardiopulmonary death can be made only by a physician may be subject to change since the adoption of the UDDA in 1984. The Kansas Supreme Court explained the concept of “accepted medical standards” as follows:

“Ordinary standards of medical practice” change as medical knowledge and technology improve. Under the instructions given in this case, it was for the jury to determine whether the medical standards required by K.S.A. 1976 Supp. 77-202 had been met. Much of the testimony presented at trial went to this very point. The attack on the statute for failure to specifically enumerate criteria is held to be without merit.<sup>43</sup>

In another case, the Court rejected the argument that the phrase “ordinary medical standards” as used in the statutory definition of death prior to the UDDA should be

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<sup>38</sup> Tucker L. Poling, Interim Executive Director of the Kansas Board of Healing Arts, dated November 4, 2019, at p. 1.

<sup>39</sup> *Id.* at pp. 1-2. The Board of Healing Arts cautioned that it would investigate a complaint of improper delegation for unprofessional conduct, which includes “delegating professional responsibilities to a person when the [physician] knows or has reason to know that such person is not qualified by training, experience or licensure to perform them. See K.S.A. 65-2836(b) and K.S.A. 65-2837(b)(26). We also caution that even if the physician delegates the determination of cardiovascular death, the physician retains the responsibility to complete the medical certification of cause of death for the death certificate. See K.S.A. 65-2412(b).

<sup>40</sup> *Minutes*, House Judiciary Committee, Senate Bill 81, March 21, 1983. Testimony of John McCabe.

<sup>41</sup> *Minutes*, House Judiciary Committee, Senate Bill 81, March 21, 1983. Attachment 2, Section 2 (Emphasis added). Testimony of Jerry Slaughter.

<sup>42</sup> *Minutes*, House Judiciary Committee, Senate Bill 81, March 28, 1983.

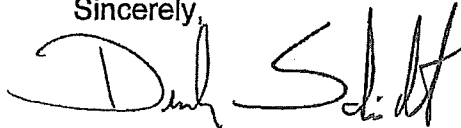
<sup>43</sup> *State v. Shaffer*, 223 Kan. 244, 250 (1977).

defined.<sup>44</sup> The Court reiterated that the question of whether the medical standards required had been met was a question of fact to be determined from the evidence.<sup>45</sup>

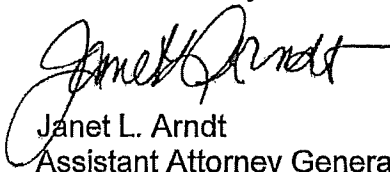
Thus, we conclude that the question of whether "accepted medical standards" permit a physician to delegate the determination of cardiovascular death to a PA or APRN is one of fact. Accordingly, we decline to opine on whether a PA or APRN can make a determination of cardiovascular death "in accordance with accepted medical standards."

In summary, we conclude that a physician licensed by the Kansas State Board of Healing Arts to practice medicine and surgery may delegate acts which would constitute the practice of healing arts to (1) a person licensed by the Kansas State Board of Healing Arts as a physician assistant pursuant to a detailed plan of care with the physician or (2) a person licensed by the Kansas State Board of Nursing as an advanced practice registered nurse in the role of clinical nurse specialist or nurse practitioner pursuant to a collaborative practice agreement with the physician. No statutes or regulations limit or prohibit such delegation for the determination of cardiopulmonary death. However, whether a PA or an APRN practicing as a clinical nurse specialist or nurse practitioner can make a determination of cardiopulmonary death "in accordance with accepted medical standards" is a question of fact and, as such, is outside the scope of this opinion.

Sincerely,



Derek Schmidt  
Kansas Attorney General



Janet L. Arndt  
Assistant Attorney General

DS:AA:JLA:sb

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<sup>44</sup> *State v. Shaffer*, 229 Kan. 310, 317-19 (1981).

<sup>45</sup> *Id.* at 319.

